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11 **as Receiver for BankUnited, F.S.B.**

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **FEDERAL DEPOSIT INSURANCE**
16 **CORPORATION, as Receiver for**
17 **BANKUNITED, F.S.B.**

18 **Plaintiff,**

19 **vs.**

20 **NA NATIONWIDE MORTGAGE**
21 **CORP., an Oregon corporation,**

22 **Defendant.**

Case No.: 8:15-cv-00781-JVS-JCG

Hon. James V. Selna

23 **STIPULATED PROTECTIVE**
24 **ORDER**

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the
6 Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that
10 are entitled to confidential treatment under the applicable legal principles. The
11 parties further acknowledge, as set forth in Section 12.3, below, that this
12 Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that
14 must be followed and the standards that will be applied when a party seeks
15 permission from the court to file material under seal.

16 **B. GOOD CAUSE STATEMENT**

17 This action requires inquiry into the facts surrounding the origination and
18 funding of residential mortgage loans and, as such, will involve discovery
19 regarding confidential personal and financial information belonging to third
20 parties. This confidential information includes, but is not limited to, the
21 following information: credit reports, Social Security numbers, loan
22 applications, bank statements, employment and income records, and tax
23 records. Such confidential and proprietary materials and information may also
24 include, among other things, confidential business or financial information,
25 information regarding confidential business practices, or other confidential
26 research, development, or commercial information (including information
27 implicating privacy rights of third parties), information otherwise generally
28 unavailable to the public, or which may be privileged or otherwise protected

1 from disclosure under state or federal statutes, court rules, case decisions, or
 2 common law. Accordingly, to expedite the flow of information, to facilitate the
 3 prompt resolution of disputes over confidentiality of discovery materials, to
 4 adequately protect information the parties are entitled (or required) to keep
 5 confidential, to ensure that the parties are permitted reasonable necessary uses
 6 of such material in preparation for and in the conduct of trial, to address their
 7 handling at the end of the litigation, and serve the ends of justice, a protective
 8 order for such information is justified in this matter. It is the intent of the parties
 9 that information will not be designated as confidential for tactical reasons and
 10 that nothing be so designated without a good faith belief that it has been
 11 maintained in a confidential, non-public manner, and there is good cause why it
 12 should not be part of the public record of this case.

13 **2. DEFINITIONS**

14 2.1 Action: this pending federal law suit.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
 16 designation of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless
 18 of how it is generated, stored or maintained) or tangible things that qualify for
 19 protection under Federal Rule of Civil Procedure 26(c), and as specified above
 20 in the Good Cause Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well
 22 as their support staff).

23 2.5 Designating Party: a Party or Non-Party that designates
 24 information or items that it produces in disclosures or in responses to discovery
 25 as “CONFIDENTIAL.”

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1 2.6 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner in which it is generated, stored, or
3 maintained (including, among other things, testimony, transcripts, and tangible
4 things), that are produced or generated in disclosures or responses to discovery
5 in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its counsel
8 to serve as an expert witness or as a consultant in this Action.

9 2.8 House Counsel: attorneys who are employees of a party to this
10 Action. House Counsel does not include Outside Counsel of Record or any
11 other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation,
13 association, or other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a
15 party to this Action but are retained to represent or advise a party to this Action
16 and have appeared in this Action on behalf of that party or are affiliated with a
17 law firm which has appeared on behalf of that party, and includes support staff.

18 2.11 Party: any party to this Action, including all of its officers,
19 directors, employees, consultants, retained experts, and Outside Counsel of
20 Record (and their support staffs).

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.13 Professional Vendors: persons or entities that provide litigation
24 support services (e.g., photocopying, transcribing, videotaping, translating,
25 preparing exhibits or demonstrations, and organizing, storing, or retrieving data
26 in any form or medium) and their employees and subcontractors.

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1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 **3. SCOPE**

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or
8 extracted from Protected Material; (2) all copies, excerpts, summaries, or
9 compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material.

11 Any use of Protected Material at trial shall be governed by the orders of
12 the trial judge. This Order does not govern the use of Protected Material at trial.

13 **4. DURATION**

14 Even after final disposition of this litigation, the confidentiality
15 obligations imposed by this Order shall remain in effect until a Designating
16 Party agrees otherwise in writing or a court order otherwise directs. Final
17 disposition shall be deemed to be the later of (1) dismissal of all claims and
18 defenses in this Action, with or without prejudice; and (2) final judgment herein
19 after the completion and exhaustion of all appeals, rehearings, remands, trials,
20 or reviews of this Action, including the time limits for filing any motions or
21 applications for extension of time pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for
24 Protection. Each Party or Non-Party that designates information or items for
25 protection under this Order must take care to limit any such designation to
26 specific material that qualifies under the appropriate standards. The Designating
27 Party must designate for protection only those parts of material, documents,
28 items, or oral or written communications that qualify so that other portions of

1 the material, documents, items, or communications for which protection is not
2 warranted are not swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited.
4 Designations that are shown to be clearly unjustified or that have been made for
5 an improper purpose (e.g., to unnecessarily encumber the case development
6 process or to impose unnecessary expenses and burdens on other parties) may
7 expose the Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items
9 that it designated for protection do not qualify for protection, that Designating
10 Party must promptly notify all other Parties that it is withdrawing the
11 inapplicable designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided
13 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
14 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
15 for protection under this Order must be clearly so designated before the material
16 is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or
19 electronic documents, but excluding transcripts of depositions or other pretrial
20 or trial proceedings), that the Producing Party affix at a minimum, the legend
21 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
22 contains protected material. If only a portion or portions of the material on a
23 page qualifies for protection, the Producing Party also must clearly identify the
24 protected portion(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents available for
26 inspection need not designate them for protection until after the inspecting Party
27 has indicated which documents it would like copied and produced. During the
28 inspection and before the designation, all of the material made available for

1 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
 2 identified the documents it wants copied and produced, the Producing Party
 3 must determine which documents, or portions thereof, qualify for protection
 4 under this Order. Then, before producing the specified documents, the
 5 Producing Party must affix the “CONFIDENTIAL legend” to each page that
 6 contains Protected Material. If only a portion or portions of the material on a
 7 page qualifies for protection, the Producing Party also must clearly identify the
 8 protected portion(s) (e.g., by making appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party
 10 identify the Disclosure or Discovery Material on the record, before the close of
 11 the deposition all protected testimony.

12 (c) for information produced in some form other than
 13 documentary and for any other tangible items, that the Producing Party affix in
 14 a prominent place on the exterior of the container or containers in which the
 15 information is stored the legend “CONFIDENTIAL.” If only a portion or
 16 portions of the information warrants protection, the Producing Party, to the
 17 extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an
 19 inadvertent failure to designate qualified information or items does not,
 20 standing alone, waive the Designating Party’s right to secure protection under
 21 this Order for such material. Upon timely correction of a designation, the
 22 Receiving Party must make reasonable efforts to assure that the material is
 23 treated in accordance with the provisions of this Order.

24 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 26 designation of confidentiality at any time that is consistent with the Court’s
 27 Scheduling Order.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall
4 be on the Designating Party. Frivolous challenges, and those made for an
5 improper purpose (e.g., to harass or impose unnecessary expenses and burdens
6 on other parties) may expose the Challenging Party to sanctions. Unless the
7 Designating Party has waived or withdrawn the confidentiality designation, all
8 parties shall continue to afford the material in question the level of protection to
9 which it is entitled under the Producing Party's designation until the Court rules
10 on the challenge.

11 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 Basic Principles. A Receiving Party may use Protected Material
13 that is disclosed or produced by another Party or by a Non-Party in connection
14 with this Action only for prosecuting, defending, or attempting to settle this
15 Action. Such Protected Material may be disclosed only to the categories of
16 persons and under the conditions described in this Order. When the Action has
17 been terminated, a Receiving Party must comply with the provisions of section
18 13 below (FINAL DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at
20 a location and in a secure manner that ensures that access is limited to the
21 persons authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party,
24 a Receiving Party may disclose any information or item designated
25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this
27 Action, as well as employees of said Outside Counsel of Record to whom it is
28 reasonably necessary to disclose the information for this Action;

1 (b) the officers, directors, and employees (including House
2 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
3 this Action;

4 (c) Experts (as defined in this Order) of the Receiving Party to
5 whom disclosure is reasonably necessary for this Action and who have signed
6 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff;

9 (f) professional jury or trial consultants, mock jurors, and
10 Professional Vendors to whom disclosure is reasonably necessary for this
11 Action and who have signed the "Acknowledgment and Agreement to Be
12 Bound" (Exhibit A);

13 (g) the author or recipient of a document containing the
14 information or a custodian or other person who otherwise possessed or knew
15 the information;

16 (h) during their depositions, witnesses ,and attorneys for
17 witnesses, in the Action to whom disclosure is reasonably necessary provided:
18 (1) the deposing party requests that the witness sign the form attached as
19 Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential
20 information unless they sign the "Acknowledgment and Agreement to Be
21 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
22 ordered by the court. Pages of transcribed deposition testimony or exhibits to
23 depositions that reveal Protected Material may be separately bound by the court
24 reporter and may not be disclosed to anyone except as permitted under this
25 Stipulated Protective Order; and

26 (i) any mediator or settlement officer, and their supporting
27 personnel, mutually agreed upon by any of the parties engaged in settlement
28 discussions.

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
 2 **PRODUCED IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other
 4 litigation that compels disclosure of any information or items designated in this
 5 Action as “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
 7 shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
 9 order to issue in the other litigation that some or all of the material covered by
 10 the subpoena or order is subject to this Protective Order. Such notification shall
 11 include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
 13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served
 15 with the subpoena or court order shall not produce any information designated
 16 in this action as “CONFIDENTIAL” before a determination by the court from
 17 which the subpoena or order issued, unless the Party has obtained the
 18 Designating Party’s permission. The Designating Party shall bear the burden
 19 and expense of seeking protection in that court of its confidential material and
 20 nothing in these provisions should be construed as authorizing or encouraging a
 21 Receiving Party in this Action to disobey a lawful directive from another court.

22 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 23 **PRODUCED IN THIS LITIGATION**

24 (a) The terms of this Order are applicable to information produced by
 25 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
 26 information produced by Non-Parties in connection with this litigation is
 27 protected by the remedies and relief provided by this Order. Nothing in these
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1 provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 (b) In the event that a Party is required, by a valid discovery request,
4 to produce a Non-Party's confidential information in its possession, and the
5 Party is subject to an agreement with the Non-Party not to produce the Non-
6 Party's confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the
8 Non-Party that some or all of the information requested is subject to a
9 confidentiality agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the
11 Stipulated Protective Order in this Action, the relevant discovery request(s), and
12 a reasonably specific description of the information requested; and

13 (3) make the information requested available for inspection by
14 the Non-Party, if requested.

15 (c) If the Non-Party fails to seek a protective order from this court
16 within 14 days of receiving the notice and accompanying information, the
17 Receiving Party may produce the Non-Party's confidential information
18 responsive to the discovery request. If the Non-Party timely seeks a protective
19 order, the Receiving Party shall not produce any information in its possession or
20 control that is subject to the confidentiality agreement with the Non-Party
21 before a determination by the court. Absent a court order to the contrary, the
22 Non-Party shall bear the burden and expense of seeking protection in this court
23 of its Protected Material.

24 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not
27 authorized under this Stipulated Protective Order, the Receiving Party must
28 immediately (a) notify in writing the Designating Party of the unauthorized

disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

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1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of
4 the specific Protected Material at issue. If a Party's request to file Protected
5 Material under seal is denied by the court, then the Receiving Party may file the
6 information in the public record unless otherwise instructed by the court.

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4,
9 within 60 days of a written request by the Designating Party, each Receiving
10 Party must return all Protected Material to the Producing Party or destroy such
11 material. As used in this subdivision, "all Protected Material" includes all
12 copies, abstracts, compilations, summaries, and any other format reproducing or
13 capturing any of the Protected Material. Whether the Protected Material is
14 returned or destroyed, the Receiving Party must submit a written certification to
15 the Producing Party (and, if not the same person or entity, to the Designating
16 Party) by the 60 day deadline that (1) identifies (by category, where
17 appropriate) all the Protected Material that was returned or destroyed and
18 (2) affirms that the Receiving Party has not retained any copies, abstracts,
19 compilations, summaries or any other format reproducing or capturing any of
20 the Protected Material. Notwithstanding this provision, Counsel are entitled to
21 retain an archival copy of all pleadings, motion papers, trial, deposition, and
22 hearing transcripts, legal memoranda, correspondence, deposition and trial
23 exhibits, expert reports, attorney work product, and consultant and expert work
24 product, even if such materials contain Protected Material. Any such archival
25 copies that contain or constitute Protected Material remain subject to this
26 Protective Order as set forth in Section 4 (DURATION).

1 **14. Any violation of this Order** may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

5 Dated: September 24, 2015

MORTGAGE RECOVERY LAW
GROUP LLP

7
8 By /s/ *Dana J. Clausen*

Dana J. Clausen
Attorneys for Plaintiff Federal Deposit
Insurance Corporation, as Receiver for
BankUnited, F.S.B.

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12
13 Dated: September 24, 2015

FRANSEN & MOLINARO, LLP

14 By /s/ *Nathan Fransen*

Nathan Fransen
Attorneys for Defendant NA Nationwide
Mortgage Corp.

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19 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

20
21 Dated: September 23, 2015


Hon. Jay C. Gandhi
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective
Order that was issued by the United States District Court for the Central District
of California on _____ [date] in the case of *Federal Deposit Insurance
Corporation as Receiver for BankUnited F.S.B. v. NA Nationwide Mortgage
Corp.*, Case No. 8:15-cv-00781-JVS-JCG. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of
this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action. I hereby appoint _____
[print or type full name] of _____
[print or type full address and telephone number] as my California agent for
service of process in connection with this action or any proceedings related to
enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____